American Waste Management and Recycling, LLC. v. CEMEX Puerto Rico, Inc. et al Doc. 48

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA, XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

URGENT MOTION REGARDING COURT ORDER AND REQUESTING SANCTIONS AND OTHER RELIEF

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC ("AWMR") ,** and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

AWMR filed this suit, in part, because CEMEX refused to abide by its obligations to AWMR and continued interfering with AWMR's contractual rights. In short, CEMEX has a pattern of not abiding with its clear obligations. It is one thing for CEMEX to repeat this behavior against a private party like AWMR. It is quite another for CEMEX to refuse to abide by this Honorable Court's orders.

As the Court is aware of, on September 24, 2007, it granted Plaintiff's request for a paralyzation Order at the site, and allowed AWMR access to its equipment, its office trailer and its

Dockets.Justia.com

personal contents and other materials at the site. It further allowed for the installation of web monitoring at the site via cameras in order to ensure compliance. The Order was clear and did not require pre-arranged coordination by the parties's respective counsel before the AWMR could visit the site and begin implementing the Order.

As the Court already knows, AWMR immediately made arrangements to remove some of the equipment at the site on September 26, when a moving coordinator met with Mr. Ramiro Lozano, Manager of the CEMEX plant in a coordinated effort with CEMEX. This removal of equipment was agreed to by Mr. Lozano but was reneged upon the very next day, after arrangements were already made and moneys expended, when employees showed up at the plant to take the equipment as agreed upon by Mr. Lozano but were again forced to leave empty-handed.

This September 26th visit to the plant prompted AWMR's motion (docket No. 43) in which AWMR described CEMEX's non-compliance with the Order as described above, and which has resulted in further losses and injury to both AWMR and to innocent third parties to this case. At that time, AWMR requested sanctions for this non-compliance.

On September 29, 2007, AWMR employees José Quiñones and Arthur Mitchell went to the site, in order to retrieve personal effects from the AWMR trailer located on the premises. The trailer was AWMR's main office at the site, and thus contains nothing but office equipment and personal effects of AWMR employees. CEMEX security telephoned CEMEX in-house counsel Maribel González, who told Mr. Quiñones that she "did not care" about the Judge's Order and that AWMR employees would not be allowed entry into the site or to remove any items from the site. *See Exhibit 1*, Unsworn Statement Under Penalty of Perjury of José Quiñones; *Exhibit 2,* note signed by CEMEX security; and *Exhibit 3*,Unsworn Statement Under Penalty of Perjury of Arthur Mitchell.

It is clear that CEMEX intends to stonewall and delay in this case for reasons that may or may not have any relation to this case. Indeed, AMWR's information is that materials have, in fact, been removed from the plant, in violation of this Court's Order. This should not be countenanced by the Honorable Court as this Court's Orders should be obeyed with the respect that such orders inherently deserve. The Court has the inherent power to sanction the parties as it sees fit and depending on the circumstances of each case. *See Santiago-Díaz v. Laboratorio Clínico y De Referencia Del Este*, 456 F.3d 272, 275 (1st Cir. 2006)(" It is black-letter law that district courts have wide authority to fashion sanctions that are appropriate to the circumstances"); *Rosario-Diaz v. Gonzólez*, 140 F.3d 312, 315 (1st Cir. 1998); and *Denmark v. Liberty Life Assur. Co. of Boston,* 481 F.3d 16, 40 (1st Cir. 2007).

As a sanction for its repeated actions and continuous violation of the Order, AWMR again requests that Defendants be ordered to immediately release the eight containers belonging to AWMR per the terms of the contract[1]. As previously stated, AWMR agrees to deposit with the Court $47.00 per metric ton of the material, as stated in the contract between the parties after weighing the metals while this dispute is resolved, a solution which will not harm the parties and merely constitutes compliance with the terms of the contract.

Furthermore, CEMEX's show of force upon the arrival of any AWMR personnel, lack of cooperation, obstruction, as well as repeated non-compliance require that this inspection and installation of monitoring cameras proceed in the presence of and under the U.S. Marshal's Office supervision. Thus, AWMR also requests that this Honorable Court issue an Order to the U.S. Marshal's Office ordering sufficient force from the Marshal's Office to attended the inspection and installation of cameras to take place on Thursday, October 4, 2007 at 9: 00 a.m. so as to make sure that this Court's Order is followed.

---

[1] This was the same sanction AWMR petitioned for in docket No. 43.

Finally, AWMR hereby informs the Court that it will be attending the site on Thursday, October 4, 2007 at 9:00 a.m. in order carry out the directives of the Court Order, including touring the site, removing personal effects from AWMR's office trailer, and not limited to installing a total of ten (10) cameras; 2 cameras in each phase the project was divided into, and 2 in the transport site, pursuant to the Court's Order. *See Exhibit 4*, map of CEMEX plant with arrows indicating the general sections where cameras will be installed.

WHEREFORE, Plaintiffs respectfully request that the Honorable Court **NOTE** the information in this motion as to CEMEX's non-compliance with this Court's Order, **GRANT** the present motion in its entirety, to wit: that as a sanction, it **ORDER** the immediate release of the eight containers loaded with metal from the CEMEX site; that such containers be weighed before leaving the premises; that AWMR be allowed to deposit the corresponding amount in the Court using the $47.00 per metric ton agreed upon price, forthwith; and that it issue any further relief it deem just and proper under the law. It is further requested that this Court **ORDER** the U.S. Marshal's Office to send sufficient force from the Marshal's Office to attended the inspection and installation of cameras to take place on Thursday, October 4, 2007 at 9: 00 a.m so as to make sure that this Court's Order is followed.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2d day of October, 2007.

CERTIFICATION: I hereby certify that on this day, the present motion was filed the Court's CM/ECF system, which will notify all counsel of record in this case.

INDIANO & WILLIAMS, P.S.C.
207 del Parque Street
Third Floor
San Juan, Puerto Rico 00912
Tel.: (787) 641-4545 / FAX: (787) 641-4544
david.indiano@indianowilliams.com
jeffrey.williams@indianowilliams.com

By: s/ David C. Indiano
DAVID C. INDIANO
U.S.D.C.P.R. Bar No. 200601

By: s/ Jeffrey M. Williams
JEFFREY M. WILLIAMS
U.S.D.C.P.R. Bar No. 202414